

EXHIBIT M “Agreement for the Provision of Water Service”

**AGREEMENT FOR THE PROVISION OF WATER SERVICE BETWEEN THE
TOWN OF LISBON AND THE VILLAGE OF SUSSEX**

(Sec. 66.0301, Wis. Stats.)

This **AGREEMENT**, entered into this 23rd day of July, 2020, between Town of Lisbon, organized and existing under the laws of the State of Wisconsin with principal offices at W234 N8676 Woodside Road, Lisbon, WI 53089, (the “Town”) and the Village of Sussex, a Municipal Corporation organized and existing, under the laws of the State of Wisconsin with principal offices at N84 W23760 Main Street, Sussex, WI 53089, (the “Village”), is as follows:

WITNESSETH:

WHEREAS, the Village owns and operates a system of water supply, storage, pumping, and distribution facilities which has capacity for supplying water utility service to properties in the Town; and

WHEREAS, the Town has no water supply, storage, pumping or distribution capabilities and has expressed a desire that the Village provide retail water utility service to properties in certain identified areas in the Town, said lands being those described in Exhibit 1 attached (“2020 Water Service Area”); and

WHEREAS, the Village has agreed to sell water to persons and places in the 2020 Water Service Area; and

WHEREAS, §66.0813(1), Wis. Stats., authorizes a Village owning a water utility to serve persons or places outside its corporate limits, and §66.0813(3), Wis. Stats., authorizes the limits of the Village’s provision of water utility service in the Town to be delineated and fixed by Village ordinance; and

WHEREAS, water supplied to the 2020 Water Service Area by the Village may supply property improvements supporting various land uses, including residential

dwelling, commercial businesses and institutional and industrial areas within the boundaries of the Town, the serviced properties being called "users"; and

WHEREAS, the Town and Village are willing to enter into a contract for water utility service under §66.0301, Wis. Stats; and

WHEREAS, in consideration of the payment of One Dollar (\$1.00) and other good and valuable consideration to each in hand paid by the other, receipt of which is acknowledged, and in further consideration of the covenants herein contained and the benefits derived by each, the Town and the Village contract and agree:

A. RECITALS

The representations and recitations in the foregoing Recitals are material to this Agreement and are incorporated into and made a part of this Agreement as though they were set forth in this Paragraph A and constitute representations and understandings of the Village and the Town according to the tenor and import thereof.

B. GENERAL INTENT AND OWNERSHIP

The Town, at its sole expense, will acquire necessary land and easements and plan, design, and construct water supply facilities in the 2020 Water Service Area (the "Town Area Facilities"), including but not limited to, water mains, service laterals, and booster pump stations with back-up generators for connecting to the Village's water system. The Town Area Facilities shall be designed to provide water and fire protection service to users within the 2020 Water Service Area. After construction, the Town will dedicate the Town Area Facilities to the Village, and the Village will own the Town Area Facilities, subject to acquisition by the Town under Paragraph R. The Town Area Facilities shall include all facilities up to and including the "curb stop" unless the service is larger than two inches, in which case the Town Area Facilities will extend to the first valve at the connection point.

B. SERVICE AREA AND CAPACITY

The Village's provision of water utility service in the Town shall be contingent upon the Village having sufficient capacity within the Village system to provide adequate supply to

the Town. The Village shall initially serve only users within the 2020 Water Service Area of the Town as depicted on Exhibit 1 which is appended hereto and incorporated herein by reference. The Town may request amendment of the Service Area and any request shall not be unreasonably denied by the Village. The extended service shall be regulated under the terms of this Agreement.

D. TOWN AREA FACILITIES

- (1) The Town shall be responsible and bear all costs for the planning, design, bidding, and construction of the Town Area Facilities needed to serve properties within the 2020 Water Service Area. All plans and specifications for the Town Area Facilities shall be submitted to the Village Engineer for review and approval, which shall be provided promptly and not be unreasonably withheld or denied. The Village Engineer's review shall be to determine consistency with construction requirements and standards of similar Village construction projects. It is expressly recognized that design of the Town Area Facilities shall be consistent with PSC 185.52 Wis. Admin. Code related to system looping to avoid dead-end mains.
- (2) The Village, or its delegee, shall be permitted to periodically inspect construction of the Town Area Facilities.
- (3) If Town Area Facilities will be constructed in the Village, the Village shall grant to the Town any permits, easements or other necessary approvals within public right-of-way or within existing public easements needed for constructing the Town Area Facilities. The Town shall restore any areas disturbed by the construction to pre-construction conditions, and the restoration upon completion of construction must be approved by the Village before final payment by the Town to the contractor retained by the Town for the work, which approval will not be unreasonably withheld.
- (4) Upon completion of the construction of the Town Area Facilities, the Town shall dedicate the Town Area Facilities to the Village and the Village shall accept dedication and ownership. Any warranties shall pass through to the Village.

- (5) The Village shall be responsible for the operation and maintenance of the Town Area Facilities, but it may contract with the Town or a third-party to conduct such operation and maintenance. The Town shall inform the Village of breaks/malfunctions in the Town Area Facilities of which it becomes aware. Any costs incurred in repairs, capital improvements or replacement of Town Area Facilities shall be borne by the Town.
- (6) Any future expansion or extension of the Town Area Facilities to serve additional properties in the 2020 Water Service Area will also be undertaken and paid for by the Town under the process set out in this Section D. Any future expansion or extension of the Town Area Facilities to serve propert(ies) located outside of the 2020 Water Service Area must be approved in writing by the Town and Village.

E. METERS

The Town shall install meters and remote meter reading technology consistent with existing meters and meter reading technology now deployed or to be deployed (to the Village's specification to ensure seamless integration with the Village's existing systems) for accurately measuring the quantity of water delivered to each water user in the 2020 Water Service Area. The Town shall dedicate the meters and meter reading technology to the Village. The Village shall install, operate, maintain, calibrate, and read the meters of its retail users as required by Chapter 196, Wis. Stats., and Chapter PSC 185 of the Wisconsin Administrative Code.

The Town shall loan the Village an amount equal to the cost to supply and install the meters and remote meter reading technology. The loan shall be at 0% interest and be amortized over 20 years. The loan shall become immediately due and payable in the event the Town or a sanitary district created by the Town forms its own water utility pursuant to the provisions of Section R. The loan repayment under this paragraph and the depreciated purchase price of the meters will effectively offset.

F. WATER SUPPLY

The water provided by the Village to water users in the 2020 Water Service Area shall satisfy all regulations for safe drinking water. The Village shall provide water pressure sufficient to satisfy all pressure requirements of the Wisconsin Department of Natural

Resources (the “DNR”), of the Wisconsin Public Service Commission (the “PSC”), the Environmental Protection Agency (“EPA”), and the American Water Works Association (“AWWA”). The Town shall reasonably cooperate with the Village to facilitate the provision of retail water service by the Village to water users within the Town.

G. COSTS OF CONSTRUCTION

The Town may recover its costs for the planning, design and construction of the Town Area Facilities allowed by law (but shall not directly or indirectly pass any such costs onto the Village or its related entities).

H. LOCAL ORDINANCES

- (1) The Town agrees to adopt, comply and enforce Chapter 12 of the Village's Municipal Code now in existence or enacted or amended and/or renumbered during the existence of this Agreement or any extension thereof.
- (2) The parties agree that the Village may inspect all necessary components of the Town Area Facilities and the Town shall assist the Village to any extent reasonably necessary. The Town agrees to take all reasonable actions to assist the Village in ensuring continuous water supply to water user in the 2020 Water Service Area.

I. WATER SERVICE CONNECTIONS

- (1) The Village may inspect the Town building permit records to ensure compliance with this Agreement. The Village may also inspect any work performed relating to water service connections. All connections to the Town Area Facilities shall meet the requirements of Chapter 12 of the Municipal Code of the Village and the Wisconsin State Plumbing Code.

J. BILLING DATES AND PROCEDURES; PAYMENT TERMS

- (1) The Village is providing retail water utility service to users in the 2020 Water Service Area. The Village shall bill the Town for cumulative monthly total charges and the Town shall be liable for payment for all charges relating to these services. The Village shall charge users in the 2020 Water

Service Area at the rate of one hundred twenty-five (125%) of the rate it bills customers in the Village.

- (2) Users in the 2020 Water Service Area shall be subject to the same terms of service as customers within the Village. The terms of service shall be those on file with the PSC. The Town shall pay all charges related to users in the 2020 Water Service Area within thirty (30) days, and if not so paid, the account shall be considered delinquent. Delinquent payments shall be subject to the same penalties and charges assessed by the Village to Village customers delinquent in the payment of water charges.

K. DISPUTES

The parties agree to be bound by §196.37, Wis. Stats., in resolving any dispute concerning interpreting this Agreement or the rates, rules and practices of the parties.

L. BOOKS AND RECORDS

The Town and the Village shall keep accurate books, records, and accounts of costs, expenses, expenditures, and receipts as they pertain to this Agreement. Upon reasonable notice, either party may examine any such books and records. Either party may request an annual certified audit report of the books and records of the other party.

M. EFFECTIVE DATE

The effective date of this Agreement shall be the date upon which it is executed by the last of the parties to this Agreement.

N. TERM OF CONTRACT; REMEDIES

- (1) The term of this Agreement shall be fifty (50) years and shall be renewed for fifty (50) year periods thereafter commencing on the anniversary date of this Agreement, 2070, unless the Agreement is terminated by mutual agreement.
- (2) Besides the penalties provided herein, and if violation of the terms of this Agreement occurs or of any rule and regulation of the DNR, the EPA, or other authority having legal jurisdiction in these matters, either party may

sue in any court of record for declaratory judgment or other relief as provided by law.

O. EFFECT OF AGREEMENT

The Village and Town recognize this Agreement is the product of a unique set of circumstances. It is mutually acknowledged that many provisions contained herein are unique unto themselves and should not be precedent for any future agreement between the Village, the Town and/or other entities.

P. SEVERABILITY

If any clause, provision, or section be declared invalid by any Court of competent jurisdiction, the invalidity of such clause, provision or section shall affect none of the remaining provisions.

Q. BINDING AGREEMENT

This Agreement shall be binding upon the parties and their respective successors and assigns, including an incorporated successor to the Town and shall be considered to run with the land of the Town and any incorporated successor thereto, whether in whole or in part.

R. TRANSFER OF OWNERSHIP

- (1) During the term of this Agreement, the Village shall not transfer, pledge, assign or encumber the Town Area Facilities.
- (2) If the PSC authorizes the Town, or a sanitary district or water district created by the Town, to become a public water utility, upon the written request of the Town, and under any conditions required by the PSC, the Village shall tender, relinquish and transfer all right title and interest to the 2020 Water Service Area, free and clear of any liens or encumbrances, for consideration of One (\$1.00) Dollar. The Village shall also transfer all right, title and interest to the meters and remote reading technology installed by the Village under Paragraph E for the original depreciated cost of the meters and remote meter reading technology. Depreciation shall be calculated on a straight-

line 20-year depreciation schedule, which is the expected useful life of said meters as approved by the PSC.

- (3) Should the Town, or a sanitary district or water district created by the Town, become a public water utility, the Village may, at its right and discretion, have the authority continue service to the Town as a wholesale customer. The Town will support the application for the conversion with the PSC.

(4) Master Metering System

a. Before re-acquiring the Town Area Facilities, the Town shall install an above-ground metering station equipped with a functional telemetry system to enable both the Town and Village to access real-time flows and pressures.

b. The Village shall own and maintain the master meter and telemetry system within the above-ground metering station. The master meter shall be tested and calibrated by the Village annually at Village expense. Copies of all system testing and calibration reports shall be submitted to both parties within 30 days of meter testing or calibration. The Village shall have access to the meter(s) in the metering station for maintenance at any reasonable time. The meter(s) shall be tested by the Village in accord with a PSC recommended schedule, and copies of all test results shall be provided to the Town. The Town may request additional tests at its expense.

S. PUBLIC SERVICE COMMISSION APPROVAL

The Town shall, at the Town's sole cost and expense, assume responsibility for submitting this Agreement to the Public Service Commission of the State of Wisconsin, and obtaining approval of the Public Service Commission which approval is the condition precedent to the extension of water service to Town properties as described in this Agreement.

T. NOTICE

All notices, demands, and communications provided for herein or made shall be delivered or mailed first class with postage prepaid, addressed in each case as follows, unless some other address shall have been designated in a written notice given in like manner, and shall be deemed to have been given or made when so delivered or mailed:

Village of Sussex
Attn: Village Administrator
Village of Sussex
N84 W23760 Main Street
Sussex, WI 53089

Town of Lisbon
Attn: Town Administrator
W234N8676 Woodside Road
Lisbon, WI 53089

[SIGNATURE LINES ON NEXT PAGE]

DATED THIS 23rd DAY OF JULY, 2020

VILLAGE OF SUSSEX

By: _____
Anthony LeDonne, Village President

Attest:

By: _____
Sam Liebert, Village Clerk

DATED THIS 23rd DAY OF JULY, 2020

TOWN OF LISBON

By: _____
Joseph Osterman, Town Chairman

Attest: _____
Steven A. Braatz, Jr., Interim Clerk

EXHIBIT 1

2020 Water Service Area